

Application No. 10/733,802
Atty. Docket No. 8473RECEIVED
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REMARKS

Claims 1-10 and 12-15 are pending in the application. Claim 1 has been amended, and Claims 16-19 have been added, leaving Claims 1-10 and 12-19 for consideration upon entry of the present Amendment.

Support for the amendment to Claim 1 can at least be found in the specification at paragraph [106].

Support for new Claims 16 and 19 can at least be found in originally filed Claim 1 and in the specification at paragraph [0054].

Support for new Claims 17 and 18 can at least be found in the specification at paragraphs [105]-[106].

No new matter has been entered. Applicant respectfully requests reconsideration in view of the claim amendments and remarks.

Rejection of Claims 1, 2, 7-10 and 12 under 35 U.S.C. § 103(a)

Claims 1, 2, 7-10, and 12 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Colbert (U.S. 2004/0154264) in view of Lightner, Jr. et al, (U.S. 2005/0126430, hereinafter "Lightner"). Applicants respectfully traverse this rejection.

Independent Claim 1 is directed to a gypsum panel comprising, *inter alia*, the following claimed elements: "...a high energy radiation cured coating of a radiation curable formulation on the fibrous facing material; and an aggregate material on the high energy radiation cured coating...."

In making the rejection, the Examiner correctly noted that Colbert fails to teach or suggest that the coating is a radiation curable coating formulation. The Examiner relied upon Lightner to cure this deficiency, stating: "[i]t would have been obvious to one having ordinary skill in the art to have used Lightner's method of radiation curing on the coating of Colbert, motivated by the desire to create a coating that is quickly dried, cured, and activated".

However, in paragraph [0026], Lightner teaches that the biocide surface treatment embodiments containing a latex or other film forming material may be dried by various types of curing methods. Absent in this reference is any teaching or suggestion that a radiation curable

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formulation is being used. In other words, the reference does not teach or suggest a formulation that is cured, i.e., a curable formulation.

Additionally, even if combined, Colbert and Lightner fail to teach or suggest at least one additional claimed element. More particularly, absent in these references is any teaching or suggestion of an aggregate material on the high energy radiation cured coating. In Applicant's specification, a number of advantages are taught to using an aggregate material including, but not limited to, creating a "surface morphology conducive to bonding anyone of a number of surface treatments, such as ceramic tile, to the gypsum panel." (Applicant's specification, paragraph [106]. In contrast, Colbert and Lightner fail to provide any suggestion that would motivate one of skill in the art to dispose the aggregate material on a high energy cured coating.

For at least these reasons, Colbert, either alone or in combination with Lightner, fails to teach or suggest at least one claimed element. Since these references fail to teach or suggest each and every element of independent Claim 1, independent Claim 1 is not obvious and is therefore allowable. Moreover, as dependent claims that depend from and further limit independent Claim 1, Claims 2-10 and 12-15 are, by definition, also allowable.

Rejection of Claims 3-6, and 13 under 35 U.S.C. § 103(a)

Claims 3-6 and 13 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Colbert (U.S. 2004/0154264) and Lightner, Jr. et al. (U.S. 2005 0126430), as applied to Claim 1, and further in view of Randall et al., (U.S. 2003/0203191). Applicants respectfully traverse this rejection.

The Randall '191 publication does not remedy any of the deficiencies of the primary or secondary references as described above and does not provide a separate basis for their combination. As a result, these claims are patentable for the very same reasons advanced above with respect to the rejection of Claim 1 and others.

In view of the foregoing, it is respectfully submitted that the instant application is in condition for allowance. Accordingly, it is respectfully requested that this application be allowed and a Notice of Allowance issued. If the Examiner believes that a telephone conference

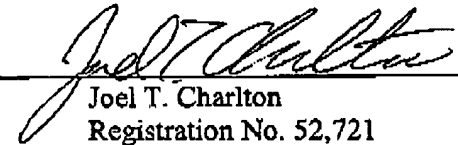
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with the undersigned would be advantageous to the disposition of this case, the Examiner is cordially requested to telephone the undersigned.

In the event the Commissioner of Patents and Trademarks deems additional fees to be due in connection with this application, Applicant's attorney hereby authorizes that such fee be charged to Deposit Account No 50-3313.

Respectfully submitted,

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